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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/669,296  | 09/23/2003  | Steven J. Patmont    | 015564-002510US     | 4652             |
| 20350   | 7590        | 05/31/2005           | EXAMINER            |                  |
| TOWNSEND AND TOWNSEND AND CREW, LLP<br>TWO EMBARCADERO CENTER<br>EIGHTH FLOOR<br>SAN FRANCISCO, CA 94111-3834 |             |                      | SWENSON, BRIAN L    |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3618                |                  |

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/669,296

Applicant(s)

PATMONT, STEVEN J.

Examiner

Brian Swenson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/29/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

1. Figures 1 and 2 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated (page 3 of the specification discloses that Figures 1 and 2 are prior art from U.S. Patent No. 6,095,274 issued to Applicant on August 1, 2000). See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4 and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 2,214,106 issued to Mayr in view of U.S. Patent No. 6,394,213 issued to Tsai.

Mayr teaches in Figures 1-4 and respective portions of the specification of a small, motor-driven vehicle having: at least one steered wheel (7); a motor (1) for driving

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the small, motor-driven vehicle; at least one motor-driven wheel (7). Mayr also teaches of the improvement of a throttle mechanism comprising: a driven shaft (15) from the motor contacting the periphery of the driven wheel (see Figures 2 and 3 where discs 16 and 17 contact drive wheel); means for providing the driven shaft with an adjustable diameter between a small diameter (Figure 2) and a larger diameter (Figure 3) when driving the driven wheel whereby, when the driven shaft is adjusted to have a small diameter, the small motor driven vehicle is propelled at low speed and high torque, and when the driven shaft is adjusted to have a large diameter, the small motor driven vehicle is propelled at higher speed and lower torque (see also page 1, left column lines 35-50 and page 2, left column line 10+).

Mayr teaches the small motor driven vehicle is a cycle not a scooter with a platform.

Tsai teaches of a motor drive for a scooter including a platform (12; Figure 2) supporting the rider from the at least one driven wheel (16) wherein the rider supported on the platform directs the steered wheel (14) while applying power from the motor through a throttle mechanism to the driven wheel. It would have been obvious to one having ordinary skill in the art at the time of invention to position the improvement to a throttling mechanism taught by Mayr on the scooter taught by Tsai. One would be motivated to place the improvement on a scooter to provide the advantage of allowing the user to power the scooter at different speeds with the same engine power, as taught by Mayr on page 2, left column lines 15-19.

In regards to claims 3 and 10, Mayr teaches of the means for providing the driven shaft with an adjustable diameter includes two opposed parts (16 and 17) for moving toward and away from one another see Figures 2 and 3.

In regards to claim 4, Mayr teaches of the two opposed parts produce a larger diameter (Figure 3) when moved toward one another and produce a smaller diameter when moved away from one another (Figure 2).

In regards to claim 8, Mayr teaches of mounting the driven shaft on a pivot (8) relative to the driven wheel; and, pivoting the driven shaft toward and away from the wheel to apply power to the driven wheel. When mounted to the scooter taught by Tsai, the motor will pivot about the pivot point (shown in Figures 3-4) and is biased towards the wheel by spring (40).

In regards to claim 9, Mayr teaches of providing of the driven shaft (15) with an adjustable diameter includes the steps of: providing the driven shaft (15) with interlocking parts (16-17) moving toward (Figure 3) and away (Figure 2) from one another to provide a first shaft diameter (Figure 3) in a first toward-and-away position and to provide a second shaft diameter (Figure 2) in a second toward-and-away position; and, moving the interlocking parts of the driven shaft to vary the torque and speed of the driven wheel (see at least page 2, left column line 10+).

3. Claims 5-6 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mayr in view of Tsai, as applied to claims 1 through 4 and 7 through 10 above and in further view of U.S. Patent No. 4,726,243 issued to Rohde.

In regards to claim 5 Mayr as modified by Tsai disclose the claimed invention except for teaching of altering the diameter of the disc by inflation.

Rohde teaches in Figures 1 and 2 of a variable transmission that alters the diameter of two opposed parts by filling each with a fluid.

It would have been obvious to one having ordinary skill in the art at the time of invention to alter the diameter of the opposed parts by filling or removing a fluid to provide a larger shaft when filled as shown by Rohde in Figures 1 and 2 in the invention in the invention taught by Mayr and as modified by Tsai. One would be motivated to use the old and well-known technique taught by Rohde to provide a continuously infinitely adjustable transmission ratio.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6,102,148 issued to Chien teaches of a direct drive for a bicycle.

U.S. Patent No. 6,227,324 issued to Sauve teaches of a direct drive for a scooter.

U.S. Patent No. 6,531,838 issued to Parks teaches of a front wheel steered and driven scooter.

U.S. Patent No. 2,480,968 issued to Ronai teaches of a variable transmission.

U.S. Patent No. 2,578,886 issued to Isherwood et al. teaches of a motor drive for a cycle, including showing in figures 4 and 5 two different diameter drives


U.S. Patent No. 6,461,261 issued to Yamamoto et al. teaches of a variable diameter transmission.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Swenson whose telephone number is (571) 272-6699. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Examiner  
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 5/20/05  
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